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Reclaiming the right to equality

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A recent letter to Justice Minister Sean Fraser is calling for changes to the federal Guide on Equity, Diversity and Inclusion Terminology. But correcting the Guide is only a first step, write Shelagh Day and Ruth Goba. *The Hill Times photograph by Andrew Meade*

Opinion

BY SHELAGH DAY, RUTH GOBA

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More than a hundred human rights experts and organizations have written to Justice Minister Sean Fraser with an urgent message: the federal government's *Guide on Equity, Diversity and Inclusion Terminology* gets the right to equality completely wrong. It needs to be fixed.

The *Guide* defines equality as "[t]he principle of treating everyone in the same manner by ensuring they have access to the same resources and opportunities." It then declares that "Equality does not necessarily lead to fair outcomes since it does not consider people's unique experiences and differing situations."

Instead, recognizing diverse needs and redressing historical disadvantage are matters of 'equity'. As the letter writers point out, casting equality as the problem and equity as the solution runs contrary to decades of human rights advocacy and law.

In the 1989 *Andrews* decision, its first ruling on the equality guarantee under section 15 of the *Canadian Charter*, the Supreme Court of Canada emphasized that "identical treatment may frequently produce serious inequality." In *Quebec (Attorney General) v. Kanyinda*, the Court recently reaffirmed that substantive equality is the "animating norm" of section 15 and "looks beyond the apparent neutrality of a law to consider a law's actual effects on disadvantaged groups." For women needing childcare, as for other disadvantaged groups, equality requires attention to distinctive needs linked to systemic inequality, not simply identical treatment. The same is true of the right to equality in human rights legislation and under international law.

In the *Guide*, however, legally binding equality obligations are being repackaged as discretionary policy commitments. The letter writers remind the Minister that there is no constitutional or international human right to 'equity' on which people can rely to hold governments accountable. The *Charter* and international treaties protect substantive *equality,* not equity, and it is the right to equality that legally requires attention to historical disadvantage and diverse needs, accommodation of difference, and ameliorative measures.

The letter writers wholeheartedly support the goals of equity, diversity and inclusion. Their concern is that denigrating equality undermines those goals. For groups challenging systemic inequality or governments' failures to address the effects of colonization, systemic racism, ableism or gender-based discrimination, equality is a human right hard won through decades of domestic and international struggle and advocacy. Replacing it with a principle lacking legal definition, enforceability or recognition as a fundamental human right, is entirely misguided.

The notion of 'equity' and corresponding misunderstanding of equality in the Guide seem to have been imported from the U.S. This contrasts with Canada's statutory commitment to employment equity which, as the 2023 Employment Equity Act Review Task Force report explains, "is a proactive approach to achieving and sustaining substantive equality in the workplace." Equity initiatives implement equality rights; they do not displace them.

The letter writers also call for a return to the long-established Canadian term 'equality-seeking groups'. This language identifies rights-holders and affirms their agency in holding governments accountable to a right guaranteed in law. They caution that substituting 'equity-deserving groups', as the Guide does, revives the distinction between deserving and undeserving claimants, historically used to deny rights to people in poverty or with precarious immigration status. Rights must not depend on whether officials think people deserve them.

The Guide describes three rounds of consultations, "giving subject-matter experts and people with lived experience from various organizations, departments and agencies an opportunity to provide feedback." That this process produced such a misconception suggests that it exists within and beyond government. It also points to a growing disconnect between governance and the human rights commitments once central to Canadian identity. Senator Kim Pate, who has raised this issue with the Government Representative in the Senate, warns that equality obligations are particularly important "when Budget 2026 proposes to let billionaires profit and leave the rest of Canada to pay the human, health, social, environmental and financial costs."

Correcting the *Guide* is only a first step. Broader conversations and reflection must follow to reclaim not simply the language but the full constitutional import of the right to equality.

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